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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 CRS RECOVERY, INC., a Virginia
Corporation, and DALE MAYBERRY,

No. C 06-7093 CW

11 Plaintiffs,

ORDER DENYING
DEFENDANTS' MOTION
TO DISQUALIFY
PLAINTIFFS' COUNSEL

12 v.

13 JOHN LAXTON, aka
14 johnlaxton@gmail.com, et al.,

15 Defendants.

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18 Defendants John Laxton and Northbay Real Estate, Inc. move to
19 disqualify Charles Carreon as counsel for Plaintiffs CRS Recovery
20 and Dale Mayberry, on the basis that Carreon has acquired an
21 interest in the subject matter of this action, the domain name
22 rl.com. Plaintiffs oppose the motion. The matter was heard on
23 September 18, 2008. Having considered oral argument and all of the
24 papers submitted by the parties, the Court denies the motion.

25 BACKGROUND

26 In October, 2004, Richard Lau, a principal of Plaintiff CRS
27 Recovery, approached Mayberry about the theft of rl.com from
28 Mayberry. For \$2,500 and a promise to attempt to recover the

1 related domain name mat.net, Mayberry assigned to CRS Recovery all
2 of his rights to rl.com. Lau subsequently incorporated CRS
3 Recovery¹ and sold one-third of its shares to Anza Silver, Inc., an
4 Oregon corporation whose shares are owned by Carreon and his
5 family. Carreon thus owns an interest in CRS Recovery and, in
6 turn, an interest in rl.com. Defendants claim that this violates
7 the California Business & Professions Code and the ABA Model Rules
8 of Professional Conduct. They also claim that Carreon attempted to
9 conceal his interest in rl.com and thereby violated Civil Local
10 Rule 3-16.

LEGAL STANDARD

12 Civil Local Rule 11-4 provides, "Every member of the bar of
13 this Court and any attorney permitted to practice in this Court
14 under Civil L.R. 11 must . . . [b]e familiar with and comply with
15 the standards of professional conduct required of members of the
16 State Bar of California." Civ. L.R. 11-4(a)(1). The California
17 Standards of Professional Conduct include the State Bar Act, the
18 Rules of Professional Conduct of the State Bar of California, and
19 decisions of any court applicable thereto. See Civ. L.R. 11-4
20 Commentary.

21 Although violations of the standards of professional conduct
22 may serve as a basis for disqualification under certain
23 circumstances, see United States v. Wunsch, 84 F.3d 1110, 1114 (9th
24 Cir. 1996), "[m]otions to disqualify counsel are strongly
25 disfavored." Visa U.S.A., Inc. v. First Data Corp., 241 F. Supp. 2d

²⁷ ¹The record does not reflect the details of CRS Recovery's ownership prior to its incorporation.

1 1100, 1103 (N.D. Cal. 2003). "Because of th[e] potential for
2 abuse, disqualification motions should be subjected to particularly
3 strict judicial scrutiny," Optyl Eyewear Fashion Int'l Corp. v.
4 Style Cos., 760 F.2d 1045, 1050 (9th Cir. 1985) (internal quotation
5 marks omitted), and should be granted only "when of absolute
6 necessity," In re Marvel, 251 B.R. 869 (Bankr. N.D. Cal. 2000),
7 aff'd 265 B.R. 605 (N.D. Cal. 2001).

8 DISCUSSION

9 Defendants object that Plaintiffs did not identify Carreon's
10 ownership of Anza Silver in their corporate disclosure statement.
11 They claim that this is a violation of Civil Local Rule 3-16, which
12 requires each party to file a "Certification of Interested Entities
13 or Persons" that discloses "any persons, associations of persons,
14 firms, partnerships, corporations (including parent corporations),
15 or other entities other than the parties themselves known to the
16 party to have . . . a financial interest (of any kind) in the
17 subject matter in controversy." Civ. L.R. 3-16(b)(1). Plaintiffs
18 correctly note, however, that the rule does not require that a
19 corporate party identify the shareholders of its shareholders
20 (*i.e.*, the shareholders of Anza Silver), and doing so would not be
21 feasible in most instances. Thus, it does not appear that Carreon
22 violated Rule 3-16. In addition, Plaintiffs have pointed to
23 evidence that, while not conclusive, suggests that Defendants knew,
24 or had reason to know, of Carreon's interest in CRS Recovery at an
25 early stage of the litigation. The fact that they filed the
26 present motion after the parties had already filed cross-motions
27 for summary judgment suggests that their move to disqualify Carreon

1 is strategic in nature.

2 Defendants further claim that, by obtaining an interest in
3 rl.com, Carreon violated California Business & Professions Code
4 § 6129, which provides, "Every attorney who, either directly or
5 indirectly, buys or is interested in buying any evidence of debt or
6 thing in action, with intent to bring suit thereon, is guilty of a
7 misdemeanor." There is very little case law on § 6129. The
8 seminal case appears to be Martin v. Freeman, 216 Cal. App. 2d 639
9 (1963). In Martin, an attorney was assigned a claim in exchange
10 for forgiving a debt owed to him by the assignor. The court held
11 that discharging a debt already owed does not constitute "buying,"
12 and thus the attorney's conduct did not fall within the scope of
13 the statute. Martin is not probative of whether Carreon violated
14 § 6129 because it is not disputed that CRS Recovery "bought" its
15 rights to rl.com.

16 Based on the plain language of § 6129, Carreon would not have
17 committed a violation unless he acquired his interest in rl.com
18 with the intent to bring suit upon it. Carreon claims he lacks any
19 such intent because rl.com was acquired in the first instance, not
20 by him, but by Lau. But Carreon acquired his interest in CRS
21 Recovery after rl.com had been assigned to it and before this
22 lawsuit was filed. Thus, it is possible that he intended to bring
23 suit upon rl.com at the time he acquired his interest in it.
24 However, the Court is not in a position to determine Carreon's
25 state of mind, and the question of his criminal liability is more
26 appropriately left to California's criminal justice system.

27 Defendants also argue that Carreon has violated ABA Model Rule
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1 1.8(i), which states, "A lawyer shall not acquire a proprietary
2 interest in the cause of action or subject matter of litigation the
3 lawyer is conducting for a client, except that the lawyer may:
4 (1) acquire a lien authorized by law to secure the lawyer's fee or
5 expenses; and (2) contract with a client for a reasonable
6 contingent fee in a civil case." Carreon may have violated Model
7 Rule 1.8 by acquiring, albeit indirectly, an interest in rl.com.

8 California, however, has not adopted the ABA Model Rules. The
9 closest analog to Model Rule 1.8 in the California Rules of
10 Professional Conduct is Rule 3-310(B), which provides, "A member
11 shall not accept or continue representation of a client without
12 providing written disclosure to the client where: . . . (4) The
13 member has or had a legal, business, financial, or professional
14 interest in the subject matter of the representation." It is not
15 clear that Carreon has violated this rule, which is concerned with
16 ensuring that a client is fully informed in the event that his or
17 her attorney has a financial interest that might potentially
18 prevent the attorney from faithfully representing the client's
19 interests. Because Carreon's interest is aligned with CRS
20 Recovery's,² the harm the Rule seeks to avoid is not present here.
21 In addition, a violation of the Rule can be avoided by providing
22 disclosure to the client. As a practical matter, CRS Recovery is
23 aware of Carreon's interest in rl.com, in that it is aware that it
24 acquired the rights to rl.com and that a third of its shares are
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26 ²Carreon's client with respect to the rl.com conversion claim
27 is CRS Recovery, the assignee of all of Mayberry's rights to the
domain, not Mayberry.

1 || owned by Carreon.

2 Regardless of whether Carreon has committed an ethical or
3 criminal violation, there is no evidence that his acquisition of an
4 interest in rl.com has impaired his representation of CRS Recovery
5 in this matter. Disqualifying him would not be in Plaintiffs' best
6 interest, and therefore is not warranted. Moreover, the Court has
7 granted summary judgment in Plaintiffs' favor, and thus the
8 litigation has nearly concluded. Disqualifying Carreon at this
9 point would serve no purpose.

CONCLUSION

11 For the foregoing reasons, Defendants' motion to disqualify
12 Plaintiffs' counsel is DENIED.

IT IS SO ORDERED.

15 || Dated: 9/26/08

Claudia Wilken

Claudia Wilken
United States District Judge